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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Robin R Kavanaugh,

10 Plaintiff,

11 v.

12 Commissioner of Social Security  
13 Administration,

14 Defendant.

No. CV-19-04771-PHX-MTL

**ORDER**

15 Pending before the Court is Plaintiff Robin R. Kavanaugh's Counsel's Motion for  
16 Attorney's Fees Pursuant to 42 U.S.C. § 406(b)(1). (Doc. 27.) Section 406(b)(1) authorizes  
17 the recovery of reasonable attorney fees from the award of past-due benefits:

18 Whenever a court renders a judgment favorable to a claimant  
19 under this subchapter who was represented before the court by  
20 an attorney, the court may determine and allow as part of its  
21 judgment a reasonable fee for such representation, not in  
22 excess of 25 percent of the total of the past-due benefits to  
23 which the claimant is entitled by reason of such judgment, and  
24 the Commissioner of Social Security may, notwithstanding the  
25 provisions of section 405(i) of this title, but subject to  
subsection (d) of this section, certify the amount of such fee for  
payment to such attorney out of, and not in addition to, the  
amount of such past-due benefits.

26 42 U.S.C. § 406(b)(1)(A).

27 Plaintiff prevailed in an appeal to this Court from the administrative law judge's  
28 decision denying benefits. The Social Security Administration calculated Plaintiff's past-

1 due benefits as \$138,164.00. It withheld \$34,541.00, representing 25 percent of the past-  
2 due benefits, to pay for potential attorney fees.

3 Having successfully litigated this case, Plaintiff's Counsel seeks an award of  
4 \$34,541.00 in fees from Plaintiff's recovery. The Court previously awarded Plaintiff  
5 \$5,500.00 in attorney fees pursuant to the Equal Access to Justice Act ("EAJA"). (Doc 26.)  
6 Plaintiff's Counsel acknowledges that a § 406(b)(1) fee award must be offset by the  
7 previously awarded EAJA attorney fee.

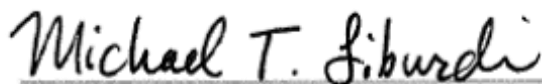
8 The Court finds that the representation agreement between Plaintiff and his Counsel  
9 represents a lawful contingency fee agreement. *See Gisbrecht v. Barnhart*, 535 U.S. 789  
10 (2002). The Court further finds that the requested fee award satisfies the statutory cap of  
11 25 percent of the total past-due benefits. The requested fee award is reasonable given the  
12 contingent nature of this case, the complexity involved, the work performed, the success  
13 obtained, and Counsel's experience. An award of attorney fees under § 406(b)(1) is  
14 appropriate.

15 Accordingly,

16 **IT IS ORDERED** that the Motion (Doc. 27) is **GRANTED**. Plaintiff's Counsel is  
17 awarded attorney's fees in the amount of \$34,541.00 pursuant to 42 U.S.C. § 406(b)(1).

18 **IT IS FURTHER ORDERED** that Plaintiff's Counsel shall reimburse Plaintiff in  
19 the amount of \$5,500.00, representing the EAJA fees previously awarded.

20 Dated this 5th day of December 2023.

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23 Michael T. Liburdi  
24 United States District Judge  
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